

## LAW AND PUBLIC POLICY

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### Abstract

Many laws and regulations were chosen as a means to implement public policy. Therefore, in essence the law also contains values, concepts and goals. The realization of the objectives of public policy in the form of law is inseparable from the purpose of the law itself, namely to regulate society effectively.

**Keywords:** Law; Public Policy

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### INTRODUCTION

On August 17, 1945 the Indonesian State was born as a new country in the midst of the peoples of the world. In addition to announcing the form of the state, namely the republic, Indonesia also declares itself to be a state based on the law (the rule of law).<sup>1</sup>

If we examine more deeply, there are 5 (five) main identities that belong to the Unitary State of the Republic of Indonesia, namely the *first* unitary state, the identity of Indonesia since the proclamation of independence is always in the form of a unitary state. *The second* is a democratic country, although there is debate about whether Indonesia has ever implemented democracy seriously in its history, but all leaders and people have never once denied democracy as the highest ideal in the relations

of the state and the people. *The third* is a republic, meaning that the existing power structure is arranged in such a way that the people become the highest holders of sovereignty. *Fourth* is the welfare state, meaning that all development products carried out refer to the welfare paradigm,, *fifth* namely the rule of law, meaning that law is always the controller of social dynamics in society.<sup>2</sup>

Development that is continuously carried out to realize national goals as referred to in the Preamble of the 1945 Constitution causes the role of law to become more prominent. The goals that have been chosen and determined will certainly be realized in the community. Law is expected to be able as a means to realize this goal

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<sup>1</sup> Satjipto Rahardjo, 2008, *Membedah Hukum Progresif*, Jakarta: PT. Kompas Media Nusantara, p. 48

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<sup>2</sup> Muchsin and Fadillah Putra, 2002, *Hukum dan Kebijakan Publik*, Malang: Averroes Press, p. 1-2

because development has produced various objectives to be achieved at the same time.<sup>3</sup>

Until now, more than half a century since the Republic of Indonesia was established, the country continues to experience turmoil and upheaval, even though the state still stands and is accepted by the community of (*systemssystems of states*) in the world. Such a social atmosphere, even though it is not a concern for other countries outside of Indonesia, but for the Indonesian people is felt as a great turmoil.<sup>4</sup>

Law is a requirement that is inherent in social life itself, namely serving community members such as allocating power, distributing resources and protecting the interests of community members. In a more specific context, law is widely used as a means to realize public policy.

Public law and policy are variables that have a very close relationship, so the study of government policy is increasingly needed to be able to understand the role of law today. These needs are increasingly felt along with the increasingly widespread role of government entering the field of human life, and the increasingly complex economic, social and political problems.<sup>5</sup>

Historically, there has always been a rejection between democracy and authoritarianism throughout Indonesian history. That is, since independent Indonesia (1945) there have been ups and downs and the ups and downs of democratic life which automatically have implications for the legal characters they have born.<sup>6</sup>

Until now the way of thinking in law was still relatively dominated by the inheritance-dogmatic heritage of XIX century thinking. Thinking like this can be synchronized with thinking based on rational intelligence that is flat, logical, and based on formal rules. The credo used is "rules and logic" (*rules and logic*).<sup>7</sup>

## DISCUSSION

### The Concept of Public Policy

In the latest public policy studies, the pospositive perspective is now a trend and is widely used by many observers of public policy studies. In postpositive analysis in public policy studies realized that the political dimension inevitably must be the focus of attention in conducting public policy studies. This is because public policy is a complexity of attracting influences from various parties that are so diverse, ranging from international

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<sup>3</sup> Esmi Warrasih, 2005, *Pranata Hukum Sebuah Telaah Sosiologis*, Semarang: PT. Suryandaru Utama, p. 128-129

<sup>4</sup> *Ibid*, p. 30

<sup>5</sup> Esmi Warrasih, *Op. Cit*, p. 129-130

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<sup>6</sup> Moh. Mahfud MD, 1999, *Pergulatan Politik Dan Hukum Di Indonesia*, Yogyakarta, Gama Media, p. 56-57

<sup>7</sup> Satjipto Rahardjo, *Op. Cit*, p. 18

political conditions to elements of domestic original politics.<sup>8</sup>

Whereas Irfan Islami,<sup>9</sup> providing a policy definition is a series of actions that are established and implemented or not implemented by a government that has a purpose or is oriented towards a particular goal in the interest of the whole community.

Meanwhile, Thomas R. Dye, as quoted by Hanif Nurkholis,<sup>10</sup> explained that policy is anything that the government chooses to do or not do. Furthermore, Dye said that, if the government chooses to do something, it must have the objectives and policies of the country that must cover all actions of the government or its officials. In addition, something that is not implemented by the government, including policies, because it has the same effect as something done by the government.

While John Dewey, as quoted by Syahrin Naihasy,<sup>11</sup> states that public policy focuses on the public and its problems. Public policy addresses issues and issues that come to the surface compiled and defined and how they are put into the policy agenda and political agenda. In addition, public policy is

the study of how and what are the effects of government active and passive actions.

In general, policy experts argue that *policy is a course of action*. So that *a course of action* should be the best choice based on certain considerations at a time and place. But in practice it may be that the choice is not the best choice of good possibilities but among the bad possibilities that it may be unconscious, forced, forced, or no choice at all.<sup>12</sup>

By understanding some of these meanings, there are important features of the understanding of policy. *First*, policy is a government action that has the goal of creating community welfare. *Second*, policies are made through systematic stages so that the main variables of all the problems to be solved are included. *Third*, policies must be implemented by implementing units (units). And *fourth*, policies need to be evaluated so that they are known to be successful or not in solving problems.<sup>13</sup>

The various notions of public policy have the following implications:<sup>14</sup>

- a. public policy in its first form is in the form of government actions;
- b. public policy is not enough only to be stated but implemented in a real form;

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<sup>8</sup> Muchsin and Fadillah Putra, *Op. Cit*, p. 41

<sup>9</sup> Irfan Islami, 2002, *Prinsip-Prinsip Perumusan Kebijakan Negara*, Jakarta: Bumi Aksara, p. 20

<sup>10</sup> Nurkholis Hanif, 2005, *Teori dan Praktik Pemerintahan Dan Otonomi Daerah*, Jakarta: PT. Gramedia Widiasarana Indonesia, p. 159

<sup>11</sup> Syahrin Naihasy, *Kebijakan Publik (Public Policy): Menggapai Masyarakat Madani*, 2006, Yogyakarta: Mida Pustaka, p. 18-19

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<sup>12</sup> Taliziduhu Ndraha, 2003, *Kybernologi (Ilmu Pemerintahan Baru)*, Jakarta: PT. Rineka Cipta, p. 493

<sup>13</sup> Hanif Nurkholis, *Op. Cit*, p. 160

<sup>14</sup> Irfan Islami, *Loc. Cit*

- c. public policy whether to do something or not to do something has and is based on certain goals and objectives;
- d. public policy must always be aimed at the interests of all members of the community.

In this regard there are those who state that some elements that must be present in public policy are values, objectives and means. Ideally, a desired condition will appear in the policy objectives set by the government.<sup>15</sup>

The purpose of public policy is a set of government actions designed to achieve certain results expected by the public as government constituents. Public policy is the choice of legal and legal actions because public policies are made by institutions that have legitimacy in the system of government. Then, public policy as a hypothesis is a policy made based on theory, model or hypothesis regarding cause and effect. Policies always rely on assumptions about behavior.<sup>16</sup>

### **The Nature of Public Policy.**

The essence of a public policy is basically to provide a conducive situation in a system of governance (state administration). Therefore, in it will articulate values, norms, and ethics as the moral basis of the practice of government. In addition, the goals and objectives as the direction to be achieved by

the existence of this policy are also other factors that cannot be ignored.

All of these factors will be elaborated in a form suggesting that the making and formulation of policies relates to the process of identifying and analyzing values that grow and develop in the community, then with these policies will determine the values that are relevant to the interests of the community.

In each policy not only aims to create a balance between different interests, but also must function as a giver of value. To formulate a good public policy, there is another dominant factor that can influence it, namely the problem of *trust*. In this discussion, it will be referred to as the term public trust (*public trust*), that is, the *public* is broadly interpreted regarding the parties involved and affected by policies whose understanding is adjusted to contextual discussion.

### **Elements of Public Policy**

process of policy formulation is closely related to scientific work processes which include:<sup>17</sup>

- a. Identification and formulation of policy issues;
- b. Determination of alternative policies for problem solving;
- c. Assessment or analysis of the feasibility of each alternative;

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<sup>15</sup> Esmi Warrasih, *Op. Cit.*, p. 132

<sup>16</sup> Sahya Anggara, 2018, *Kebijakan Publik*, Cet. Kedua, Bandung: Pustaka Setia, p.36.

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<sup>17</sup> Sudarwan Danim, 2000, *Pengantar Studi Penelitian Kebijakan*, Jakarta: Bumi Aksara, p. 16

- d. Implementation of policies by determining minimum performance standards;
- e. Evaluation of success with quantitative measures.

In public policy there are 2 (two) perspectives, namely the perspective of the policy process and the perspective of policy structure. From the perspective of the policy process, the stages of the policy-making process can be described as follows:<sup>18</sup>

- a. Arranging the agenda. At this stage the elected and appointed officials put the problem on the public agenda.
- b. Policy formulation. At this stage officials formulated alternative policies to overcome the problem. Alternative policies see the need to make executive orders, judicial decisions, and legislative actions.
- c. Policy adoption. At this stage alternative policies are adopted with support from the majority of the legislature, consensus among the director of the institution or judicial decisions.
- d. Policy implementation. At this stage the policies taken have been carried out by administrative units which mobilize financial and human resources.

- e. Policy assessment. At this stage the audit and accounting units in government determine whether executive, legislative and judicial bodies fulfill the requirements of the law in policy making and achievement of objectives.

While from the perspective of policy structure there are 5 (five) elements of policy, namely:<sup>19</sup>

- a. Policy objectives. Good policies must have good goals. A good goal at least fulfills 4 (four) criteria: *First*, what is desired to be achieved; *Second*, is rational; *Third*, something clear; *Fourth*, oriented forward.
- b. Problem. Problems are an important element in policy. Errors in determining problems can lead to total failure in the entire policy process.
- c. Demands. In general, it is known that participation is an indication of advanced society. Participation can take the form of support, demands and challenges.
- d. Impact. In the economy, the double impact is called the *multiplier effect*. For example, policies in investment, taxation, or government spending to finance routine or development programs. The policy action has an influence on the increase or reduction of the overall income of the community.

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<sup>18</sup> William N. Dunn, 2000, *Pengantar Analisis Kebijakan Publik*, Yogyakarta: Gadjah Mada University Press, p. 24

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<sup>19</sup> Syahrin Naihasy, *Op. Cit*, p. 32-36

- e. Means. A policy is implemented using means. The means include power, incentives, capacity building, symbolism and changes to the policy itself. One of the facilities chosen is legislation.

Academically, evaluation of public policy is divided into three types, namely:<sup>20</sup>

- a. *Administrative evaluation*. Administrative evaluation is the evaluation of public policies carried out within the scope of government or agencies. Or generally this evaluation is carried out by government agencies related to certain programs, such as Inspector General, private consultants, and so on.
- b. *Judicial Evaluation*. Judicial evaluation is an evaluation carried out relating to legal objects. Whether there is a legal violation or not from the evaluated public policy.
- c. *Political Evaluation*. Political evaluation is generally carried out by political institutions both parliament and political parties. This evaluation is concerned with political considerations of a public policy.

### Category of Public Policy

James E. Anderson as quoted by Sahya Anggara,<sup>21</sup> mentions the categorization of public policy as follows:

- a. *Substantive or procedural policies*.

*Substantive policy* is a policy seen from the substance of the problems faced by the Government. For example, education policy, economic policy, and others. *Procedural policy* is a policy seen from the parties involved in its formulation (*policy stakeholders*). For example the Education Law, which is authorized to make is the Ministry of National Education. However, in the implementation, many government agencies / organizations and other organizations were involved, both government agencies and non-government organizations, namely the DPR, Ministry of Justice, Ministry of Manpower, Republic of Indonesia Teachers Association (PGRI), and the President who approved the law. The agencies / organizations involved are called *policy stakeholders*.

- b. *Distributive, Redistributive, and Regulatory policies*.

*Distributive policy* is a policy that regulates the provision of services / benefits to individuals, groups, or companies. For example, a policy on *tax holidays*. *Redistributive policy* is a policy that regulates the transfer of wealth, ownership, or rights. For example, a policy on land acquisition for public purposes.

<sup>20</sup> Muchsin and Fadillah Putra, *Op. Cit*, p. 130-131

<sup>21</sup> Sahya Anggara, *Op. Cit*, p. 55-56

*Regulatory policy* is a policy that regulates restrictions / prohibitions on actions / actions. For example, a policy about prohibiting possession and use of firearms.

c. *Material Policy*

*Material policy* is a policy that regulates the allocation / provision of material resources that are tangible to recipients. For example, a simple home-making policy.

d. *Public Goods and Private Goods Policies.*

*Public goods policy* is a policy that regulates the provision of goods / services by the government for the benefit of many people. For example, policies regarding security and protection, provision of public roads.

While *private goods policy* is a policy that regulates the provision of goods / services by the private sector for individual (individual) interests in the free market in exchange for certain fees. Examples of entertainment venues, hotels, and others.

### **Law and Public Policy.**

Laws and policies are basically interdependent. The linkage is fundamentally seen in the fact that basically the application of law (*rechtstoepassing*) really requires public policy to actualize the law in the community. Likewise with the implementation of public policy, an implementation of public policy

cannot run well if in the implementation of public policy implementation it is not based on strong legal bases.<sup>22</sup>

On the other hand there are those who argue that many legislations are chosen as a means to implement public policy. Therefore, in essence the law also contains values, concepts and goals. The process of embodying ideas and goals is the essence of law enforcement.<sup>23</sup> In line with this, Bambang Sunggono<sup>24</sup> argues that the realization of policy objectives in the form of law is inseparable from the purpose of the law itself, namely to effectively regulate the community using deliberate legal regulations.

On the other hand there are those who provide an explanation that if the chosen facility is law, then the non-legal factors will always give influence in the process of implementation. To anticipate this, policy measures are needed including:<sup>25</sup>

- a. combine the action plan of a program by setting clear objectives, implementing standards, costs and time;
- b. implement programs by mobilizing structures, staff, costs, *resources*, procedures and methods;

<sup>22</sup> Muchsin and Fadillah Putra, *Op. Cit*, p. 78

<sup>23</sup> Esmi Warrasih, *Loc. Cit*

<sup>24</sup> Bambang Sunggono, 2002, *Hukum dan Kebijaksanaan Publik*, Jakarta: Sinar Grafika, p.10

<sup>25</sup> Esmi Warrasih, *Op. Cit*, p. 136-137

- c. make a time schedule and monitoring to ensure that the program continues as planned.

Legal enforcement as a means of public policy, because technically the law can provide or do the following:<sup>26</sup>

- a. law is a means to ensure certainty and provide predictability in people's lives;
- b. law is a means of the government to implement sanctions;
- c. law is often used by the government as a means to protect against criticism;
- d. the law can be used as a means to distribute resources.

According to Article 7 paragraph (1) of Law Number 12 Year 2011 concerning the Establishment of Legislation, the types and hierarchies of the Laws and Regulations are as follows:

- a. 1945 Constitution of the Republic of Indonesia;
- b. Stipulation of the People's Consultative Assembly
- c. Laws / Government Regulations Substituting the Law;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regulation;
- g. Regency / City Regulation.

Public policy in the form of laws or regional regulations is a type of public policy that requires public policy explanations or often termed implementing regulations. For example, to implement regional regulations and to authorize legislation, the head of the region stipulates regional head regulations and / or regional head decisions. Whereas public policies that can be directly implemented are in the form of Presidential Decrees, Presidential Instruction, Decrees of Regional Heads, Decisions of Head of Services and others<sup>27</sup>.

## **CLOSING**

### **Conclusion**

The link between law and public policy will be more relevant when the law is implemented.

### **Suggestion.**

In making and establishing policies, the government should pay attention to and comprehensively review the various aspects of people's lives. Do not let the policy be made only for political interests and mere power.

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<sup>26</sup> Bambang Sunggono, *Op. Cit*, p. 76-77

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